

INTIMATE IMAGE DISTRIBUTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the offense of aggravated unlawful distribution of a counterfeit intimate image.

Highlighted Provisions:

This bill:

- ▶ restricts the offense of aggravated unlawful distribution of a counterfeit intimate image to individuals 18 years old and older; and
- ▶ makes technical revisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5b-205, as enacted by Laws of Utah 2021, Chapter 134

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **76-5b-205** is amended to read:

76-5b-205. Unlawful distribution of a counterfeit intimate image -- Penalty.

(1) As used in this section:

(a) "Child" means an individual under ~~[the age of]~~ 18 years old.

(b) "Counterfeit intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that has been edited, manipulated, or altered to depict the likeness of an identifiable individual and purports to, or is made to appear to, depict that individual's:

- (i) exposed human male or female genitals or pubic area, with less than an opaque

33 covering;

34 (ii) a female breast with less than an opaque covering, or any portion of the female
35 breast below the top of the areola; or

36 (iii) the individual engaged in any sexually explicit conduct or simulated sexually
37 explicit conduct.

38 (c) "Distribute" means the same as that term is defined in Section 76-5b-203.

39 (d) "Sexually explicit conduct" means the same as that term is defined in Section
40 76-5b-203.

41 (e) "Simulated sexually explicit conduct" means the same as that term is defined in
42 Section 76-5b-203.

43 (2) An actor commits the offense of unlawful distribution of a counterfeit intimate
44 image if the actor knowingly or intentionally distributes a counterfeit intimate image that the
45 actor knows or should reasonably know would cause a reasonable person to suffer emotional or
46 physical distress or harm, if:

47 (a) the actor has not received consent from the depicted individual to distribute the
48 counterfeit intimate image; and

49 (b) the counterfeit intimate image was created or provided by the actor without the
50 knowledge and consent of the depicted individual.

51 (3) An ~~individual~~ actor who is 18 years old or older commits aggravated unlawful
52 distribution of a counterfeit intimate image if, in committing the offense described in
53 Subsection (2), the individual depicted in the counterfeit intimate image is a child.

54 (4) This section does not apply to:

55 (a) (i) lawful practices of law enforcement agencies;

56 (ii) prosecutorial agency functions;

57 (iii) the reporting of a criminal offense;

58 (iv) court proceedings or any other judicial proceeding; or

59 (v) lawful and generally accepted medical practices and procedures;

60 (b) a counterfeit intimate image if the individual ~~portrayed~~ depicted in the image
61 voluntarily allows public exposure of the image;

62 (c) a counterfeit intimate image that is portrayed in a lawful commercial setting; or

63 (d) a counterfeit intimate image that is related to a matter of public concern or interest

or protected by the First Amendment to the United States Constitution or Article I, Sections 1 and 15 of the Utah Constitution.

(5) (a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(i) the distribution of a counterfeit intimate image by the Internet service provider occurs only incidentally through the provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the provider does not intentionally aid or abet in the distribution of the counterfeit intimate image; and

(iii) the provider does not knowingly receive from or through a person who distributes the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the counterfeit intimate image.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of a counterfeit intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the counterfeit intimate image;

(iii) the hosting company does not knowingly receive from or through a person who distributes the counterfeit intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the counterfeit intimate image; and

(iv) the hosting company immediately removes the counterfeit intimate image upon notice from a law enforcement agency, prosecutorial agency, or the individual purportedly depicted in the counterfeit intimate image.

(c) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(6) This section does not apply to an actor who engages in conduct that constitutes a violation of this section to the extent that the actor is chargeable, for the same conduct, under Section 76-5b-201, sexual exploitation of a minor.

(7) (a) Except as provided in Subsection (7)(b), knowing or intentional unlawful distribution of a counterfeit intimate image is a class A misdemeanor.

(b) Knowing or intentional unlawful distribution of a counterfeit intimate image is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.

(c) Except as provided in Subsection (7)(d), knowing or intentional aggravated unlawful distribution of a counterfeit intimate image is a third degree felony.

(d) Knowing or intentional aggravated unlawful distribution of a counterfeit intimate image is a second degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.